who holds as security for his debt an obligation of a third person for a sum exceeding the amount of the debt are greatly curtailed. It is held, and it certainly seems just, that in the bankruptcy of such third person, proof may be made against his estate for the full amount of his obligation, though the dividends will be limited to the amount of the primary debt. This decision must go upon the theory that a creditor may prove for his full legal debt. And the rule based upon this theory, and recognizing the true nature of the defence of payment, is not only consistent and sound upon legal principles, but will also be found in application to produce the most satisfactory results.

2. Where A is solvent and B insolvent, and A pays the whole debt, what are the rights of A as to proof in bankruptcy against B's estate?

The settled rule is that A can only prove for half the debt. This may rest either on the ground that B really owes A only half of the amount paid, or on the theory suggested above that a creditor can only prove for what he is equitably entitled to receive. It is open to the same criticism as the rule in the case where A and B are both insolvent. If B, for example, can pay fifty per cent., the creditor by going first upon B's estate for the full amount will receive half the amount due, and can recover the other half from A. If he goes first upon A he will recover the whole from him, and B's estate will only be compelled to pay A one-quarter of the amount of the debt. If the view be adopted that the creditor can prove for the whole legal debt, a more satisfactory result will be reached. After A has paid, B is still liable at law to C for the full amount. As we have seen, on principle C should be allowed to prove for the full amount against B's estate, and receive dividends up to half the amount of the debt for the benefit of A. His legal right against B he really holds solely for A's benefit. And it would seem that A should be subrogated to this right, and allowed to prove directly against B's estate. There is a line of cases which seem to support this theory. Where it is the law that in bankruptcy specialty debts shall be paid first, if A and B are jointly liable on a bond to C, and A pays the whole, his claim in bankruptcy against B is treated as a specialty claim. This can only rest on the theory that A proves on the legal right against B vested in C, but held by C for A's benefit. It would seem that consistency would require that in such a case A's proof should be for full amount. But the cases hold otherwise.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — MASTER AND SERVANT — CONCEALED RISKS OF EMPLOYMENT — VOLENTI NON FIT INJURIA. — Plaintiff, employed in defendant's factory, was injured by falling upon steps which, as plaintiff was aware, had been rendered icy by the freezing of spray from steam-pipes. *Held*, that it was error to withdraw the case from the jury upon the ground that the risk was one which, by entering the employment, she had assumed. *Fitzgerald* v. *Connecticut River Paper Co.*, 29 N. E. Rep. 464 (Mass.).

The court reasoned that an employee did not, by entering the service, take the risk of non-apparent dangers; that it was not established in this case that when plaintiff entered the employ of defendant, she had reason to foresee that the steps

would be left covered with ice; nor was it shown that at the time of the accident she either fully appreciated the danger, or ought to have done so, or had any other egress from the building by which she might have avoided it. It was admitted by the court that their reasoning would tend greatly to lessen the value of "*volenti non fit injuria*" as a defence.

AGENCY — MASTER AND SERVANT — LIABILITY OF MASTER. — *Held*, that where plaintiff was injured by the negligence of a truck-driver in the employment of defendant, but who was on that day serving another company under a contract which the defendant had made with the latter to furnish it daily with a horse, truck, and driver, defendant, and not the other company is liable for the injury. *Quinn* v. *Electric Co.*, 46 Fed. Rep. 506 (N. Y.).

AGENCY — RATIFICATION. — Members of the defendant's school board made a written contract not under seal which they signed as individuals, but in the body of which they called themselves "members of school board of defendant." This contract was ratified by vote of the school board as a body, and also by vote of the defendant town. *Held*, the defendant town was not liable, as the contract did not purport to bind it, and their vote of ratification was ineffectual because no contract had ever been made on their behalf. *Western Publishing House* v. *District Tp. of Rock*, 50 N. W. Rep. 551 (Ia.).

Quære whether this defendant was not liable as undisclosed principal to a simple contract made in the agent's name.

AGENCY — VARIANCE FROM AUTHORITY. — A letter authorizing agents to sell land for $2,200, "provided that the party could pay $700 down and the balance in one, two, and three years," did not authorize them to sell for $1,000 down and the balance in one and two years. *Speer* v. *Craig et al.*, 27 Pac. Rep. 891 (Col.).

BILLS AND NOTES — MORAL CONSIDERATION. — A note payable to a missionary society, which recites that the maker desires "to advance the cause of missions, and to induce others to contribute to that purpose," shows that it is given upon sufficient consideration. *Garrigus* v. *Home Frontier and Foreign Missionary Society*, 28 N. E. Rep. 1008 (Ind.).

BILLS AND NOTES — STATUTE OF LIMITATIONS. — The statute runs from the time of the last payment on a note, *Crockett* v. *Mitchell*, 14 S. E. Rep. 118 (Ga.).

CHAMPERTY — EFFECT ON RIGHT OF ACTION. — While a champertous agreement between plaintiff and his attorney for the prosecution of a certain suit is against public policy and void, it does not affect plaintiff's right to prosecute the action in regard to which the champertous agreement was made. *Pennsylvania Co.* v. *Lombardo*, 29 N. E. Rep. 573 (Oh.).

CONSTITUTIONAL LAW — ASSOCIATIONS — FORFEITURE OF PROPERTY. — The constitution and by-laws of the Knights of Labor provide that on suspension of a local assembly, its property shall be forfeited and shall vest in the secretary of the general assembly. *Held*, that this provision is void; it confiscates, without judicial process, property which is not derived from the general assembly, but is held and owned by the local assembly absolutely. *Wicks* v. *Monihan et al.*, 29 N. E. Rep. 139 (N. Y.).

CONSTITUTIONAL LAW — CRIMINAL LAW — EXCLUSION OF PUBLIC. — Under the constitution providing "that the accused shall have speedy and public trial," and a statute that "the sittings of every court in the State shall be public," it is reversible error for the court on a murder trial to order the exclusion from the court-room of all but "respectable citizens." *People* v. *Murray*, 50 N. W. Rep. 995 (Mich.).

CONSTITUTIONAL LAW — CRUEL PUNISHMENTS. — New York code provides that a criminal under sentence of death shall be kept in solitary confinement in the penitentiary until executed, and that the court shall designate a week during which the execution must take place, but that the warden shall fix the day and hour, keeping the same secret from the prisoner and the public. *Held*, that legislature and court of New York having determined that this is not a cruel and unusual punishment, this court cannot say that it infringes on the immunities or privileges secured to citizens of the United States by the fourteenth amendment. *McElvaine* v. *Brush*, 12 Sup. Ct. Rep. 156.

CONSTITUTIONAL LAW — IMPAIRING OBLIGATION OF CONTRACTS — STATE COURT DECISION. — Where the State court construes the charter of a corpora-

tion so that it does not exempt it from the particular tax complained of, there is no impairment of the obligation of the contract between the State and the corporation by any subsequent law of the State, and the Supreme Court of the United States has no jurisdiction. *St. Paul M. & M. Ry. Co.*, v. *Todd County, Minn.*, 12 Sup. Ct. Rep. 281.

Here the tax was assessed under the general taxing-laws in force at the time of granting the charter; there was, therefore, no subsequent law which could be said to impair its obligation. The assessment was a purely ministerial act, and not a law of the State, and so not within the constitutional prohibition. This differs in the above particular from cases where a subsequent law enters into the case, and where it is settled that the United States Supreme Court has jurisdiction to review the State court's construction of the contract.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — TAX ON GOODS. — A statute requiring all merchants to pay a tax of "one-tenth of one per cent. on the total purchases in or out of the State" does not interfere with interstate commerce within the meaning of the Constitution. It is a tax on the goods, and not on the privilege of purchasing them. *Ex parte Brown*, 48 Fed. Rep. 435.

CONSTITUTIONAL LAW — PROTECTION OF WITNESSES — SELF-CRIMINATING TESTIMONY. — Revised Statute, 1860, provides that no "evidence obtained from any party or witness by means of a judicial proceeding . . . shall be given in evidence, or in any manner used against him, or his property or estate, in any court of the United States, . . . in any criminal proceeding, or for the enforcement of any penalty or forfeiture." *Held*, that, as this provision would not prevent the use of testimony so obtained to search out other testimony to be used against the witness, the protection afforded is not coextensive with that of the fifth amendment, which declares that no person "shall be compelled in any criminal case to be a witness against himself;" and hence a witness in any criminal investigation in the federal courts may still refuse to answer, on the ground that this testimony will tend to criminate himself. 44 Fed. Rep. 268 reversed. *Counselman* v. *Hitchcock*, 12 Sup. Ct. Rep. 195.

See articles on this case in 5 Harv. Law Rev. 24.

CONTRACTS — ILLEGALITY — INTERSTATE COMMERCE RATES. — The interstate commerce law makes it penal for a carrier to issue bills of lading at rates different from those filed with the commission, or to demand or receive freight charges variant from such established rates. The act makes it penal for any person to knowingly obtain transportation at less than the established rates. Defendant agreed to carry goods from Illinois to Alabama over its own and a connecting line. The bill of lading called for $5 freight charges, but the connecting line refused to deliver up the goods to the plaintiff, the consignee, except on payment of $29, the schedule rate. Neither plaintiff nor consignor knew the schedule rate. *Held*, the plaintiff may recover the value of the goods. He was not bound to know the published schedule of rates. *Mobile & O. R.* v. *Dismukes*, 10 So. Rep. 289 (Ala.).

CORPORATIONS — EXEMPTION FROM TAXATION — LIABILITY TO MUNICIPAL ASSESSMENTS. — A charitable corporation exempt by law from all taxation is liable under a municipal assessment for repairing the street in front of its property as such obligation is not imposed under the taxing power, but is in the nature of a police regulation. *City of Philadelphia* v. *Contributors to the Pennsylvania Hospital*, 22 Atl. Rep. 744 (Pa.).

CORPORATIONS — LIMITATION OF INDEBTEDNESS. — Constitution of Iowa provides that municipal corporations shall not incur indebtedness beyond a limited amount. Statute provides that they may issue new bonds in exchange for old bonds, or sell them and apply the proceeds to paying off the old ones. A certain township, whose indebtedness already exceeded the constitutional limit, issued bonds under said statute. *Held*, that the bonds are unenforceable, as issued in excess of the amount allowed by the constitution. Brown, Harlan, and Brewer, JJ., dissenting. *Dist. Township of Doon, Lynn Co., Ia.*, v. *Cummins*, 12 Sup. Ct. Rep. 220.

The point of difference between the majority and the minority was this: These new bonds, being only in exchange for the old bonds, in no way increased the town's indebtedness, and so, the minority said, did not violate the constitution; while the majority construed the constitution more strictly, and pointed out that

if these bonds were held good, the indebtedness would be increased, if the town officers should not do their duty in applying the proceeds to the payment of the old bonds.

DAMAGES — RAILROADS — ABUTTING OWNERS. — Where a railroad has been built along a street, abutting owners may recover prospective damages, the measure of damage being the difference in value before and after the injury. *Highland Ave. & B. R.* v. *Matthews*, 10 So. Rep. 267 (Ala.).

This rule had been previously applied to municipal, and is now extended to private corporations.

EQUITY — SPECIFIC PERFORMANCE — STATUTE OF FRAUDS — PART PERFORMANCE. — An oral agreement to convey land is not taken out of the statute of frauds by the payment of the purchase money. *Forrester* v. *Flores*, 28 Pac. Rep. 107 (Cal.).

The true rule is conceived to be as follows: Payment of the purchase money will not take the contract out of the statute of frauds on the ground of fraud, since the vendor can recover the money at law, and the law presumes that he is made whole by the recovery with costs; but payment of the purchase money, as part performance, will take the contract out of the statute of frauds, since the acceptance of the money by the vendee must be taken as an admission of the agreement alleged, and, therefore, a partial carrying out of its terms.

EQUITY — INJUNCTION — RIGHTS OF TAX-PAYER. — A resident and tax-payer of a school district who lives near the legally located school-house, and who has children of proper age to send to school, and whose taxes will be materially increased by a removal of the school-house two and a half miles further from his residence, has such an individual interest in the subject-matter, not common with all other tax-payers of said district, that he may go to equity to enjoin unlawful removal of said school-house. *Graves* v. *Jasper School Township*, 50 N. W. Rep. 904 (S. Dak.).

EVIDENCE — COMPETENCY OF WITNESSES — PARDONED CRIMINAL. — The granting of a full and unconditional pardon by the President of the United States to a person convicted of a felony restores his competency as a witness, and this result is not affected by a recital in the pardon that it was granted for the reason, among others, that his testimony was desired by the government in a cause then pending in a court of the United States. *Boyd* v. *United States*, 12 Sup. Ct. Rep. 292.

EXTRADITION — TRIAL FOR DIFFERENT OFFENCE. — A person surrendered on extradition proceedings by the authorities of another State cannot, while held in custody thereunder, be tried for a different crime from the one upon which his extradition was obtained, unless he voluntarily waives his privilege. *Ex parte McKnight*, 28 N. E. Rep. 1034 (Ohio).

HUSBAND AND WIFE — DIVORCE — VOLUNTARY SEPARATION — ADULTERY. — A husband may obtain a divorce for his wife's adultery, notwithstanding that, in pursuance of an agreement under which they were married, they have never lived together as husband and wife. *Franklin* v. *Franklin*, 28 N. E. Rep. 680 (Mass.).

INSURANCE — CONDITIONS OF POLICY. — The policy sued on forbade the use of open lights on the premises insured, but permitted necessary repairs. Certain repairs could be made only by using open lights. At the time of applying for the policy, this fact was stated to the defendants' agent, who replied that by the policy permission was given to repair at all times. *Held*, the proviso in the policy must be construed as referring to the ordinary use of lights on the premises, and not to the special use in making repairs. Therefore, defendant was liable. *Au Sable Lumber Co.* v. *Detroit Manufacturers' Mut. Fire Ins. Co.*, 50 N. W. Rep. 870. (Mich.).

INSURANCE — IN FAVOR OF WIFE — DEATH OF INSURED THROUGH CRIME OF WIFE — RESULTING TRUST IN FAVOR OF INSURED'S ESTATE. — *Held*, the executors of a person who has effected an insurance on his life for benefit of his wife can maintain an action on the policy, notwithstanding the fact that the death of the insured was caused by the felonious act of the wife. The trust created by the policy in favor of the wife under the Married Women's Property Act, 1882, having become incapable of being performed by reason of her crime, the insurance money forms part of the estate of the insured, and as between his legal representatives and

the insurers no question of public policy arises to afford a defence to the action. *Cleaver* v. *Mutual Reserve Fund Life Association* [1892], 1 Q. B. 147. [Ct. of App. (Eng.)]

The court treated the executors as trustees under the statute for the wife, and then for the estate. The trust in favor of the wife having been rendered incapable of performance by her crime, the executors recover on the policy for the benefit of the estate.

MANDAMUS — RAILROAD — REFUSAL TO STOP AT TOWN. — A petition for a mandamus to compel a railroad company to erect a station and stop its trains at a certain town. The town is a county seat and directly in the line of the railroad, but the company, for some purpose of its own, refused to stop there, and erected its station some distance beyond the town, where it owned land. *Held*, that the writ could not issue, there being no specific legal duty to stop at that town. Brewer, Field, and Harlan, JJ., dissenting. *No. Pac. R. Co.* v. *Territory of Washington*, 12 Sup. Ct. Rep. 283.

MORTGAGES — SATISFACTION — INTENTION TO KEEP ALIVE. — S conveyed her equity of redemption in mortgaged premises to P. She afterwards brought action to have the conveyance set aside, and obtained a decree to that effect. During the pendency of the suit P had paid off the mortgage, and he now claimed that it still subsisted as against S, as an incumbrance in his favor upon the estate. *Held*, that whether payment of a charge extinguishes the charge depends upon the intention with which payment is made. Here the payment was made during the pendency of the suit, and there is hence a presumption that P intended that the mortgage should survive. *In re Pride* [1891] 2 Ch. 135.

MUNICIPAL CORPORATIONS — PARLIAMENTARY LAW — MAJORITY VOTE. — Under a statute which provides that an issue of school bonds must be authorized by vote of "a majority of all the inhabitants of any school district entitled to vote, to be ascertained by taking . . . the ayes and noes of such inhabitants attending at any school-district meeting": *held*, Parker, J., dissenting, that a vote in favor of bonds by the majority of those voting is sufficient to satisfy the statute, though such majority is less than half of the voters actually present at the meeting. *Smith et al.* v. *Proctor et al., School Trustees*, 29 N. E. Rep. 312 (N. Y.).

In so far as this decision has any bearing on the much-vexed "quorum" question, it is obviously calculated to give aid and comfort to Speaker Reed.

NEGLIGENCE — IMPUTED NEGLIGENCE — DOCTRINE OF THOROGOOD v. BRYAN. — Where one hires a hack, the driver of which is employed by the owner and is not controlled by the passenger, the negligence of the hackman is not imputable to the passenger, since the former is not the latter's servant. *Randolph* v. *O'Riorden et al.*, 29 N. E. Rep. 583 (Mass.).

This decision adds Massachusetts to the long list of jurisdictions which reject *Thorogood* v. *Bryan*, 8 C. B. 115.

PARTNERSHIP — RIGHTS OF RETIRING PARTNERS. — Upon the dissolution of a partnership, the retiring partners, having sold "all their right, title, and interest in the firm" to the remaining partners, can, in the absence of a stipulation to the contrary, engage in the same business, and personally solicit the old customers. And this is true even though the good-will was included in the sale to the remaining partners. *Williams* v. *Farrand*, 50 N. W. Rep. 446 (Mich.).

This would seem to be opposed to the English decisions. See Addison on Contracts, 1154. *Labouchere* v. *Dawson*, L. R. 13 Eq. 322.

PERSONAL PROPERTY — RIGHTS OF DESIGNERS IN THEIR OWN COMPOSITIONS. — A draughtsman or designer has such property in a model or plan of his own composition as to be entitled to maintain an action for the unauthorized use of such, although no letters patent or copyright has been secured. *New England Monument Company* v. *Johnson*, 22 Atl. Rep. 974 (Pa.).

PRACTICE — UNOFFICIAL OPINION — DOES NOT PRECLUDE JUDGE FROM SITTING. — The judge had presided at the trial in which the prisoner was alleged to have committed perjury. He became firmly convinced of the guilt of the prisoner and had stated this opinion unofficially. *Held*, this does not disqualify him from presiding at the trial of the indictment for perjury. *Heflin* v. *State*, 14 S. E. Rep. 112 (Ga.).

PROPERTY — TRADE-MARKS — INVENTIONS. — A trade-mark is a personal sign or badge distinguishing the productions of one individual from those of another. A mere mechanical contrivance, a method of construction or of ar-

rangement, is not a trade-mark, but an invention, which must be patented if it is to be monopolized. Therefore, the fact that the manufacturer of a certain article has adopted a bottle of peculiar form does not prevent a rival manufacturer of the same article from adopting the same kind of bottle, which is in the public market; and the mere mechanical arrangement of bottles in packing is neither an invention nor a trade-mark whose use by others may be resisted. *Hoyt* v. *Hoyt*, 22 Atl. Rep. 755 (Pa.).

This case places a decided limitation upon the principle on which the courts of various jurisdictions, in cases analogous to trade-marks, have restrained a particular defendant, by reason of his fraud, from using a mark or sign to which the plaintiff, as far as concerns the general public, has no exclusive right. See 4 Harv. Law Rev. 321, and cases there cited; also, 5 Harv. Law Rev. 139.

REAL PROPERTY — DEDICATION — WHAT CONSTITUTES ACCEPTANCE. — A street ran through the business portion of a town. The sewer and water commissioner by authorization of the mayor and council made an excavation into which plaintiff fell and was injured. There was no evidence as to the origin of the street nor as to the length of user nor as to the power of the town authorities to bind the town; yet it was held that a sufficient dedication and acceptance would be presumed, and that the plaintiff should recover. *Town of Salida* v. *McKinna*, 27 Pac. Rep. 810 (Col.).

REAL PROPERTY — EASEMENTS — PRESCRIPTION — TACKING OF DIFFERENT USERS. — Defendant's elevated road was operated by cable from 1868 to 1871, and by steam from 1871 to 1888. In 1879 the supports of the track, during the process of reconstruction, were moved 16 inches nearer plaintiff's building. Defendant claimed that a certain portion of plaintiff's right had been lost by continuous adverse user on defendant's part for twenty years. *Held*, that adverse user cannot be divided, and as on the whole the users for a cable road and for a steam road are different, no account will be made of that fractional part of each which is common to both and continuous; the two users will be treated as entirely disconnected, and cannot be tacked. *Am. Bank Note Co.* v. *New York El. R.R. Co.*, 29 N. E. Rep. 304 (N. Y.).

REAL PROPERTY — MORTGAGES — FRAUD ON CREDITORS — WIDOW'S RIGHT OF DOWER FREE OF EQUITIES. — A, by deed absolute on its face conveyed land to defendant, one of his creditors, partly with a view to secure defendant's debt, partly to defraud the other creditors. After A's death, his widow and his heirs brought a bill to have the deed declared a mortgage. *Held*, that the heirs, as they claimed through A, were debarred from relief, though themselves innocent, by reason of A's fraud, and that the same rule applied to the widow in respect to land claimed by inheritance from deceased children; but that in respect to the portion which would have come to her by right of dower, she would not be debarred of relief, although she joined in the conveyance to B, unless at the time she had knowledge of the fraud. *Kitts et al.* v. *Wilson et al.*, 29 N. E. Rep. 401 (Ind.).

REAL PROPERTY — REMOTENESS — POSSIBILITY OF REVERTER. — A conveyed land to a religious society for so long as the society shall support certain specified doctrines, and when the land is devoted to other purposes, "then the title of said society, or its assigns, shall forever cease, and be forever vested in the following-named persons," among them A himself. *Held*, that this limitation is void for remoteness. That the society takes a qualified or determinable fee, with a possibility of reverter in A. That the possibility of reverter dependent on a condition subsequent is not within the rule against perpetuities, [*Tobey* v. *Moore*, 130 Mass. 448; *French* v. *Old South Soc.*, 106 Mass. 479], and *a fortiori*, this possibility of reverter dependent on a qualified or determinable fee is not within the rule. *First Ch. Soc. of No. Adams* v. *Boland*, 29 N. E. Rep. 524 (Mass.).

REAL PROPERTY — REMOTENESS — SPLITTING CONTINGENCY. — A testator gave his residuary estate in trust, as to one-fifth share for his son A for life; remainder in fee to such children of A as shall attain twenty-one, and also to such children of any son or daughter of A who might die under twenty-one, as should live to attain twenty-one. The four other one-fifth shares were to be held on similar trusts for the testator's daughters, B, C, D, and E, respectively, and their respective issue. And the testator declared that if any or either of A, B, C, D, and E should die without leaving any lawful issue who should live to attain a vested interest in their respective shares, the share or shares to which such failure

should happen should go over to the other members of the class upon the same trusts as the other shares were held upon. A dies without ever having had a child. *Held*, that the gift over was too remote, and could not take effect. It cannot be split into gifts upon two contingencies, one of which is the death of A without leaving issue. The case of *Evers* v. *Challis* (7 H. L. C. 531) is confined to the case where an executory devise over can be split into two gifts, one of which is a remainder. *In re Bence* [1891] 3 Ch. Div. 242.

REAL PROPERTY — QUASI EASEMENT TO FREEDOM FROM NOISE — PROCEEDINGS IN EQUITY. — Where plaintiff, an abutting owner, brings a bill in equity against defendant, an elevated railroad company, as a result of which proceedings defendant is ordered to pay a lump sum in condemnation of plaintiff's easements, *held*, by four judges, three dissenting, that the element of damage by noise cannot be admitted. *Kane* v. *R.R. Co.* 125 N. Y. 164, distinguished. The Court say that where plaintiff sues for a past wrongful interference with his rights, he can recover for all incidental damage, of which noise is a part; but, as no such thing exists as a quasi easement or absolute right to freedom from noise, and as the "fee damages" awarded by equity are by way of condemnation and purchase, and not by way of damages for a tort, plaintiff cannot receive payment for something which he does not possess and cannot sell. *American Bank Note Co.* v. *N.Y. El. R.R. Co.*, 29 N. E. Rep. 305 (N. Y.).

REAL PROPERTY — WASTE — CUSTOM. — The cutting of timber by a life-tenant in accordance with the modern method of cultivating timber estates is not waste. Evidence of modern usage in that respect is admissible in determining what is waste; and it is not necessary that the usage or custom should be immemorial. *Dashwood* v. *Maginac*, [1891] 3 Ch. Div. 306.

STATUTE — WIDOW'S ALLOWANCE — CONSTRUCTION OF "NECESSARIES." — Under a statute which exempts from liability for the debts of the deceased such parts of his personal estate as the Probate Court, "having regard to all the circumstances of the case, may allow to the widow, for herself and for his family under her care," A received $5,000. It appeared that A had $1,200 a year in her own right; that she expected to live, free of charge, with her father; and that she had no children. Her husband's estate was insolvent. *Held*, upon appeal by the creditors, that the allowance should be reduced to $500, as the statute contemplated nothing more than the satisfaction of actual temporary wants. Morton and Allen, JJ., dissented, on the ground that the social position and habitual style of living of the petitioner ought to be taken into account, and also because it was contrary to the received practice to interfere with the discretion of the Probate Court. *Dale* v. *Hanover Nat. Bank*, 29 N. E. Rep. 271 (Mass.).

SURETYSHIP — DISCHARGE OF SURETY — CONCEALMENT BY PRINCIPAL WHEN NOT TO SURETY'S PREJUDICE. — B bought a traction engine of plaintiff, and gave in payment for it three notes, maturing at intervals of a year. On the second of these notes he secured the indorsement of defendant as surety. He also gave plaintiff, unknown to defendant, a mortgage, providing, among other things, that on default of any one of the notes all should become due. *Held*, that the mortgage did not operate as a change of the contract, to discharge the surety; nor was failure to notify her thereof the suppression of a material fact amounting to fraud. *Springfield Engine & Thresher Co.* v. *Park*, 29 N. E. Rep. 444 (Ind.).

SURETYSHIP — GUARANTY OF NOTE — EXHAUSTING SECURITIES. — A assigns a note secured by mortgage, and as part of the same transaction assigns the mortgage and guarantees the payment of the note. *Held*, A is not liable on the guaranty until resort has been had to the mortgage security. A's contract is to pay the debt if, by due diligence, it cannot be collected from the debtor or out of the mortgage security. *Dewey* v. *W. B. Clark Inv. Co.*, 50 N. W. Rep. 1032 (Minn.).

TORT — ACTION OF WIFE FOR ENTICEMENT OF HUSBAND. — Under an Indiana statute which gives to married women the right to sue alone for injuries to their persons and property, *held*, that a wife can maintain an action in her own name against one who wrongfully entices her husband from her, and thereby deprives her of his *consortium* and support. *Haynes* v. *Nowlin*, 29 N. E. Rep. 389 (Ind.).

This doctrine is of very recent growth; the earliest case in accord decided in a court of last resort in this country being *Westlake* v. *Westlake*, 34 O. St. 691 (1878). According to the most recent survey of the authorities (26 Am. Law Rev. No. 1), Ohio, Connecticut, New York, New Hampshire, and the U. S. Circuit Court in Illinois allow the action; England (*Lynch* v. *Knight*, 9 H. L.

Cas. 577), Wisconsin, Maine and the U. S. Circuit Court in Kansas, do not. Indiana refused the action in 1881 under a slightly different statute, but in 1891 allowed it to a woman after her divorce.

TRUSTS — CORPORATIONS — RECEIVER. — An insurance company deposited some of its funds with a trust company, to be distributed among the certificate holders in case the insurance company made default in meeting its obligations. Afterward the trustees of the insurance company petitioned for its voluntary dissolution, and a receiver was appointed. *Held*, that the Court had no power to compel the trust company, in the absence of misconduct on its part, to turn the trust fund over to the receiver to be distributed by him instead of by the trust company. *In re Voluntary Dissolution of Home Provident Safety Fund Ass'n of New York*, 29 N. E. Rep. 323 (N. Y.).

TRUSTS — FRAUDULENT CONVEYANCES. — A father gave to his minor son as a gift a note for $1,000. The father collected the note when due and invested the money in shares of an iron company, the stock being in the son's name. This stock depreciated, and the father, in consideration of this fact and also of a debt of a few hundred dollars due to his son, conveyed to him land worth $1,000. At the time of this conveyance, the father was insolvent. *Held*, the conveyance was not in fraud of creditors. *Second National Bank* v. *Merrill, etc. Works*, 50 N. W. Rep. 503 (Wis.).

The Court here regarded the father as trustee for the son, and thought that he ought to restore to the son the depreciation in value of the corpus of the trust fund. It might be questioned whether a trustee who invests *bona fide* is liable if the funds fall in value. If he is not so liable, it would seem that the son gave no value for the conveyance, which therefore should have been set aside.

TRUSTS — LACK OF BENEFICIARIES — TILDEN WILL. — Where property is left to executors for an association to be incorporated, with full discretion in the executors as to the amount to be so applied, the rest to be applied to such charitable, scientific, or educational institutions as they think fit, there is no valid trust, for lack of a certain beneficiary, the cy-près doctrines having no force in New York. *Tilden* v. *Green*, 28 N. E. Rep. 880 (N. Y.).

WILLS — RESIDUARY DEVISE — ACCELERATION. — Where a will provides that certain moneys shall go to the testator's wife, and that the remainder of the estate shall be held in trust by the executor, the income to be paid to the wife during her life, at her decease certain legacies to be paid, and the residue to go to the next of kin; the fact that the wife elects to take her statutory portion of the estate, instead of taking under the will, does not accelerate the time of payment of the legacies, and they cannot be paid until after the decease of the widow. *Jones* v. *Knappen*, 22 Atl. Rep. 630 (Vt.).

REVIEWS.

DIGEST XIX. 2. LOCATI CONDUCTI. Translated with notes, by C. H. Monro, Fellow and Lecturer of Gonville and Caius College, Cambridge. Cambridge: University Press, 1891. 8vo. pp. 83.

This little book in its style and character forms a companion volume with the series of Selected Titles from the Digest, by Bryan Walker, and can hardly fail to interest a student or lawyer who has read the Institutes. To pass from the Institutes to the Digest is to make a distinct advance in the study of Roman law; for the Digest is to the Institutes as our law reports are to the easy and flowing Blackstone. In the Digest we are brought closer to the Roman law as a practical system, full of knotty problems, and by no means free from conflicting or dissenting judgments, as the present volume attests. In the Digest also we make the acquaintance of the great Roman lawyers, and the work derives an added interest from the many opportunities it affords to compare the decisions of their acute and powerful minds with the decisions upon similar questions of judges of the common law, equally